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Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)
)
Amendment of Section 73.202(b)) MM Docket No. 97-72
Table of Allotments,) RM-9017
FM Broadcast Stations.)
(Mullins and Briarcliffe Acres,)
South Carolina))

NOTICE OF PROPOSED RULE MAKING

Adopted: February 14, 1997; Released: February 21, 1997

Comment Date: April 14, 1997
Reply Comment Date: April 29, 1997

By the Chief, Allocations Branch:

1. The Commission has before it the petition for rule making filed by Atlantic Broadcasting Co., Inc. ("petitioner"), licensee of Station WWSK(FM), Channel 296C2, Mullins, South Carolina, proposing the reallocation of Channel 296C2 from Mullins to Briarcliffe Acres, South Carolina, and the modification of Station WWSK(FM)'s license accordingly. Petitioner states its intention to apply for the channel, if reallocated to Briarcliffe Acres.

2. Petitioner seeks to invoke the provisions set forth in Section 1.420(i) of the Commission's Rules, which permit the modification of a station's license to specify a new community of license without affording other interested parties an opportunity to file competing expressions of interest. See Amendment of the Commission's Rules Regarding Modification of FM and TV Authorizations to Specify a New Community of License, 4 FCC Rcd 4870 (1989), recon. granted in part, 5 FCC Rcd 7094 (1990) ("Community of License"). In support of its proposal, petitioner states that Briarcliffe Acres is an incorporated community in Horry County, South Carolina, with a population of 552¹ persons. Petitioner submits a letter from Edgar Dyer ("Dyer"), Esq., on behalf of the mayor and town council stating that even though Briarcliffe Acres does not allow commercial activities within its corporate limits, the community is supportive of Station WWSK(FM)'s request to name Briarcliffe Acres as its new community of license. Dyer also states that Briarcliffe Acres has its own police chief, town council, and mayor.

¹All population figures are taken from the 1990 U.S. Census.

It has defined boundaries and provides services to its citizens, including police protection, solid waste disposal and fire protection. Therefore, petitioner asserts that Briarcliffe Acres possesses the requisite "social, economic and cultural components that are commonly associated with community status," citing Semora, North Carolina, 5 FCC Rcd 934 (1990); and Trade, Tennessee and Beech Mountain, North Carolina 6 FCC Rcd 5835 (1991). Pursuant to the FM allotment priorities set forth in Revision of FM Assignment Policies and Procedures, 90 FCC 2d 88, 92 (1982),² petitioner claims the reallocation of Channel 296C2 to Briarcliffe Acres would result in a preferential arrangement of allotments since it would provide the community with its first local aural transmission service, without depriving Mullins (population 5,910) of its sole local aural transmission service.³ Finally, petitioner states that Briarcliffe Acres is not located in an urbanized area.

3. We recognize that neither Mullins nor Briarcliffe Acres is located within an urbanized area. However, in light of our policy that if a station seeks to change its community of license to one outside an urbanized area, but provides a 70 dBu signal over 50% or more of an urbanized area, the proponent is required to provide the same showing as parties seeking to move within an urbanized area. See Headland, Alabama and Chattahoochee, Florida, 10 FCC Rcd 10352 (1995). In this case, Briarcliffe Acres is located six kilometers (4 miles) from the Myrtle Beach Urbanized Area and Station WWSK(FM) presently provides a 70 dBu signal over 67% of that Urbanized Area. If Channel 296C2 is reallocated to Briarcliffe Acres, Station WWSK(FM) will continue to provide 67% of the Myrtle Beach Urbanized Area with a 70 dBu signal. Therefore, petitioner is requested to provide a sufficient showing to demonstrate Briarcliffe Acres warrants a first local service preference. See Community of License, supra.⁴ Moreover, a staff engineering analysis has revealed that since Station WWSK(FM) does not seek to relocate its transmitter, the reallocation will not result in any gain or loss areas, and the station will continue to provide Mullins with city grade 70 dBu coverage.

4. Based on the information before us, we are unable to determine whether petitioner's proposal would result in a preferential arrangement of allotments. However, we believe the proposal warrants consideration since the reallocation of Channel 296C2 to Briarcliffe Acres could provide the community with its first local aural transmission service, without depriving Mullins of its sole local aural transmission service. An engineering analysis has determined that Channel 296C2 can be allotted to Briarcliffe Acres in compliance with the Commission's

²The allotment priorities are: (1) first full-time aural service; (2) second full-time aural service; (3) first local service; and (4) other public interest matters. [Co-equal weight is given to priorities (2) and (3).]

³Petitioner states that Mullins is also served by Station WJAY(AM), which will remain licensed to the community.

⁴See also RKO General (KERC), 5 FCC Rcd 3222 (1990); and Faye and Richard Tuck, 3 FCC Rcd 5374 (1988).

minimum distance separation requirements with a site restriction of 25.7 kilometers (16 miles) northwest at petitioner's presently authorized site.⁵ In accordance with the provisions of Section 1.420(i) of the Commission's Rules, we will not accept competing expressions of interest in the use of Channel 296C2 at Briarcliffe Acres, South Carolina.

5. Accordingly, we seek comments on the proposed amendment of the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, for the communities listed below, to read as follows:

<u>City</u>	<u>Channel No.</u>	
	<u>Present</u>	<u>Proposed</u>
Mullins, South Carolina	296C2	---
Briarcliffe Acres, South Carolina	---	296C2

6. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

7. Interested parties may file comments on or before April 14, 1997, and reply comments on or before April 29, 1997, and are advised to read the Appendix for the proper procedures. Comments should be filed with the Secretary, Federal Communications Commission, Washington, DC 20554. Additionally, a copy of such comments should be served on the petitioner, or its counsel or consultant, as follows:

Gary S. Smithwick, Esq.
Smithwick & Belendiuk, P.C.
1990 M Street, NW., Suite 510
Washington, DC 20036
(Counsel for Petitioner)

8. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. See Certification That Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections

⁵The coordinates for Channel 296C2 at Briarcliffe Acres are North Latitude 33-56-14 and West Longitude 78-57-53.

73.202(b), 73.504 and 73.606(b) of the Commission's Rules, 46 FR 11549, February 9, 1981.

9. For further information concerning this proceeding, contact Sharon P. McDonald, Mass Media Bureau, (202) 418-2180. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no ex parte presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An ex parte presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an ex parte presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an ex parte presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

Attachment: Appendix

APPENDIX

MM Docket No. 97-72
RM-9017

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the Notice of Proposed Rule Making to which this Appendix is attached.

2. Showings Required. Comments are invited on the proposal(s) discussed in the Notice of Proposed Rule Making to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. Cut-off protection. The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules).

(b) With respect to petitions for rule making which conflict with the proposals in this Notice, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. Comments and Reply Comments; Service. Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the Notice of Proposed Rule Making to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the

person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See Section 1.420(a), (b) and (c) of the Commission's Rules.) Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554.

5. Number of Copies. In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. Public Inspection of Filings. All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Reference Center (Room 239) at its headquarters, 1919 M Street, N.W., Washington, D.C.